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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/572,867

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John F. Rabolt

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RATNERPRESTIA

P.O. BOX 1596

WILMINGTON, DE 19899

EXAMINER

TENTONI, LEO B

ART UNIT

PAPER NUMBER

1742

MAIL DATE

DELIVERY MODE

06/10/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/572,867	Applicant(s) RABOLT ET AL.	
	Examiner LEO B. TENTONI	Art Unit 1742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 6-21 is/are pending in the application.
- 4a) Of the above claim(s) 15-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 6-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05052011:06012011</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1742

DETAILED ACTION

Election/Restrictions

1. Claims 15-21 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 30 October 2009.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Art Unit: 1742

4. Claims 1, 6-10 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foulkes (U.S. Patent Application Publication 2006/0036318 A1) in combination with Senecal et al (U.S. Patent Application Publication 2001/0045547 A1) for the reasons of record.

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Foulkes (U.S. Patent Application Publication 2006/0036318 A1) in combination with Senecal et al (U.S. Patent Application Publication 2001/0045547 A1) as applied to claims 1, 6-10 and 12-14 above, and further in view of Balkus, Jr. et al (U.S. Patent Application Publication 2003/0168756 A1) for the reasons of record.

Response to Arguments

6. Applicant's arguments filed on 27 April 2011 have been fully considered but they are not persuasive.

7. Applicant argues (pages 5-7) that Foulkes does not teach (1) mixing a dye capable of reversibly changing color and a polymer, (2) mixing . . . at a temperature below the temperature at which the dye or polymer degrades, or (3) wherein the dye penetrates more than the surface of the dyed fiber and is distributed uniformly throughout the dyed fiber (emphasis by applicant). Regarding (1), Foulkes teaches that polymer fiber material, including photochromic material therein, is electrospun (see paragraphs [0028] and [0040] of Foulkes). For electrospinning, polymer and any other desired material (e.g., photochromic material) are mixed together and forced through openings in a

Art Unit: 1742

spinneret under the influence of an electric field to form fibers. See also paragraphs [0010] and [0020] - [0023] of Senecal et al wherein the electrospun material is in the form of a solution. Regarding (2), both Foulkes and Senecal et al are directed to the manufacture of dyed fibers and one of ordinary skill in the art at the time the invention was made would be motivated to use a temperature (or a range of temperatures) which is(are) lower than the dye degradation temperature or the polymer degradation temperature because too high a temperature will result in the manufacture of poor-quality fibers. Regarding (3), Foulkes and Senecal et al do not explicitly teach that the fibers have any non-uniform characteristics and so one of ordinary skill in the art at the time the invention was made would have a reasonable expectation that the fibers manufactured by the combination of Foulkes and Senecal et al would have a uniform distribution of dye in the fibers.

8. Applicant argues (pages 6 and 7) that the term "impregnated with" in Foulkes would be understood by one of ordinary skill in the art at the time the invention was made to mean that already-formed fibers should be somehow treated to impregnate the fibers with the opacifying material, and that this does not suggest mixing or a mixture. Examiner responds that Foulkes is not limited to just impregnating fibers with a dye. Foulkes teaches that polymer fiber material and any other desired material (e.g., photochromic material) is electrospun (see paragraphs [0028] and [0040] of Foulkes), which means that the polymer fiber material

Art Unit: 1742

and any other desired material are mixed together prior to the electrospinning process. See also paragraphs [0010] and [0020] - [0023] of Senecal et al wherein the electrospun material is in the form of a solution.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEO B. TENTONI whose telephone number is (571)272-1209. The examiner can normally be reached on Monday - Friday (6:30 A.M. - 3:00 P.M.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina A. Johnson can be reached on (571) 272-1176. The fax phone number for the

Art Unit: 1742

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LEO B TENTONI/
Primary Examiner, Art Unit 1742